

**PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE**

**POST LEGISLATIVE SCRUTINY - FREEDOM OF INFORMATION (Scotland) ACT 2002**

**SUBMISSION FROM : PETER GRANT MP**

**Introduction**

These comments are submitted in a personal capacity and do not necessarily represent the views of the Scottish National Party or of any of the organisations I have previously worked for.

Prior to the passing of the 2002 Act I had been an opposition Councillor in Fife for ten years; had worked in NHS finance for separate periods of five years and one year; and had been employed as a qualified accountant in local government (not in Fife) for about four years. In all of those roles I saw situations where I believed that the lack of a statutory public right to know undermined the public interest and prevented public bodies, including directly elected councils, from being properly held to account by their electorates.

I was employed in a different local authority at the time the Act came into force and was responsible for providing training to some staff on the Act's provisions. I drafted responses to a number of early FOI requests from journalists and contributed to an inter-council officer network who were considering how to co-ordinate the approach when the same request was sent to several different authorities.

In 2006 I became Chair of the Standards & Audit Committee of Fife Council whose responsibilities included oversight of the Council's compliance with regulatory requirements. I was Leader of the Council from 2007 until 2012 and was then Leader of the Opposition until I was elected to Parliament in 2015. During my time as Opposition Leader I successfully appealed to the Commissioner over Fife Council's refusal to publish the advice given to Councillors about the likely impacts of budget cuts.

**Question 1 - In your view, what effects has the Freedom of Information (Scotland) Act 2002 (FOISA) had, both positive and negative?**

The effect has been overwhelmingly positive. In the early days of the Scottish Parliament I said that the two biggest improvements that could be made to Local Government in Scotland would be reform of the electoral system to give more proportional representation, and the introduction of a Freedom of Information right. Having been involved in Local Government as a Councillor and as an officer through the introduction of both of these, my view has not changed. Some of the most serious failings I saw in the Councils where I was a member in the 1990's (failings which were not unique to those Councils) would be almost unthinkable today, because of both the FOI Act and the culture change it has started to

deliver, for example through the much greater transparency of public sector audit and inspection reports.

I know similarly of failings in NHS management that I witnessed during my time in the NHS, which were not addressed, and which subsequently led to serious financial difficulties. Warnings had been issued by external auditors but their reports were confidential and were, to all intents and purposes, only seen by the people who had created the problems and by others who might be seen to have had a vested interest in keeping them from public scrutiny.

I would also make specific reference to the importance of framing the Act as a general and universal requirement to provide information when asked, unless specified circumstances allowed an exemption to be claimed. This was necessary to make it clear that the Act represented a complete culture change right across the public sector and that it was the nature of the information, not the identity of the body holding it, that mattered. This meant, for example, that Police services could no longer claim an almost universal right to confidentiality simply because information had been collected or created in connection with a criminal enquiry.

Negative impacts have in my view been primarily around an increase in workload which has disproportionately affected smaller public bodies. My involvement in responding to FOI requests was in the early days of the legislation and I believe that a lot of the workload arose because of a lack of familiarity with the legislation (for example I remember having to point out to some very senior Local Government managers that the Act did not oblige them to devote vast amounts of time to creating information that didn't already exist). There was also obviously a lack of precedent to guide respondents as to how the various exemptions, for example, would work in practice.

I share the concerns that others have raised about cases where information released under FOI has then been misused in an intentionally misleading, sometimes blatantly dishonest way. I do not agree with those who would use this to justify a restriction on existing rights.

**Question 2 - Have the policy intentions of FOISA been met and are they being delivered? If not, please give reasons for your response.**

In relation to the first three objectives (to establish a legal right to information, to balance this with the need to protect sensitive information, and the establishment of an independent Commissioner), - yes, overwhelmingly so.

In relation to the fourth objective (to encourage the proactive disclosure of information) – yes, although I doubt whether it will ever be possible to say that this has been fully achieved. The sheer volume, diversity and complexity of information held, rapid changes in the ways in which people now choose to access information, and changes in the kinds of information most likely to be sought by the public, all mean that this objective is very much a “moving target”.

**Question 3 - Are there any issues in relation to the implementation of and practice in relation to FOISA? If so, how should they be addressed?**

In principle I support the wider use of Section 5 powers to extend the range of bodies subject to FOI. For example where an external organisation receives a substantial part of its funding from a public body the public has a legitimate interest, not only in knowing that the organisation is exercising good stewardship of public funds, but in information about such matters as gender pay gap, Living Wage accreditation, or use of “zero hours” contracts. It would be reasonable to apply this only to organisations above a specified size. As much of this information may already be held by the “sponsoring” public body it may be possible to achieve the same result by ensuring that it was not exempt from disclosure.

**Question 4 - Could the legislation be strengthened or otherwise improved in any way? Please specify why and in what way.**

**5. Are there any other issues you would like to raise in connection with the operation of FOISA?**

I am aware that there has been controversy surrounding the practice of the Scottish Government of publishing the replies to some requests at the same time as the information is released to the applicant. I find it difficult to see the consistency in arguing that information should be released under FOI but then withheld from the general public until a journalist or other third party chooses to publish it. It is an important principle of our FOI legislation that once information has been released under FOI it is considered to be in the public domain. This, for example, is why the identity of the applicant is usually irrelevant in deciding whether to release the information asked for – the decision should be the same regardless of who the applicant is.

Please note that it is not necessary to answer every question and you can provide any other information that you consider to be relevant.